

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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KIMBERLY-CLARK CORP., et al.,

Plaintiff,

v.

Case No. 05-C-985

TYCO HEALTHCARE RETAIL GROUP,

Defendant.

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**ORDER**

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Defendant has moved for issuance of a deposition subpoena compelling Charles Chappell, the inventor of one of the patents at issue in this case, to appear for a deposition. Chappell lives in Switzerland and Tyco believes it will be impossible to obtain his testimony without court order; his own attorney has indicated as much. K-C opposes the motion, suggesting that the need for a subpoena is not as drastic as Tyco claims and that discovery may be had under other means.

Under 28 U.S.C. § 1783(a),

A court of the United States may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of a national or resident of the United States who is in a foreign country, or requiring the production of a specified document or other thing by him, if the court finds that particular testimony or the production of the document or other thing by him is necessary in the interest of justice, and, in other than a criminal action or proceeding, if the court finds, in addition, that it is not possible to obtain his testimony in admissible form without his personal appearance or to obtain the production of the document or other thing in any other manner.

I first note that Chappell is not a party to this action and not an employee of K-C; as such, it is unclear whether K-C is even in a position to object. In any event, I conclude that the interests of justice would be served by ordering Mr. Chappell to appear to be deposed. As the sole inventor of the Chappell patent, which is the subject of a *Markman* hearing on October 10, it is reasonable to conclude he would be able to provide discoverable information. It is also reasonable to conclude that his testimony may not feasibly be obtained in any other fashion.

Accordingly, IT IS ORDERED that a subpoena be issued compelling Charles John Chappell to attend a deposition at 9:00 a.m. on October 6, 2006 at the offices of Nutter McClennen & Fish, LLP, 155 Seaport Boulevard, Boston, Massachusetts and that Tyco shall tender \$2840 to Mr. Chappell prior to his deposition.

**SO ORDERED** this 29th day of September, 2006.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge